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IN THE

Supreme Court of the United States

October Term, 1968

No. 521

DORRIS E. DREYFUS,

Petitioner,

vs.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, a not-for-profit corporation,

Respondent.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully moves this Court for a rehearing of her Petition for Writ of Certiorari which this Court denied without opinion on November 25, 1968. Rehearing is sought on the following ground not set forth with particularity in the initial petition:

THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT HAS DECIDED AN IMPORTANT STATE QUESTION IN A MANNER IN CONFLICT WITH STATE LAW, SO AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION PURSUANT TO RULE 19 (1) (b) OF THE RULES OF THIS HONORABLE COURT

This action began in the United States District Court for the Northern District of Illinois, which took jurisdiction on the basis of diversity of citizenship. In such an action, according to the holding of this Court in *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), the law of the forum (Illinois) is to be applied in determining questions of substantive law.

The court below, while purporting to apply the *Erie* doctrine, grossly misapplied the controlling law of the State of Illinois and, as a consequence, wrongfully deprived petitioner of her property.

In the district court, petitioner and respondent were conflicting claimants as to assets of the estate of petitioner's deceased husband, from whom petitioner had been divorced in 1955 in Illinois. The divorce decree provided for a lump sum payment in lieu of alimony, which both the district court [App. C-5][1] and the court below [App. A-2] recognized as unpaid. Respondent asserted, and the court below ruled, that petitioner's right to receive the payments directed by the decree of divorce had been lost as a consequence of orders

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[1] As used herein:
"R" refers to Appendix in the record.
"RS" refers to Supplemental Appendix in the record.
"App." refers to Appendix of Petition for Writ.

entered in Illinois in 1957 and 1958 purporting to amend the divorce decree and extinguish the provisions of the decree directing payments to be made to petitioner.

The law of the State of Illinois, since 1947, has specifically precluded, prohibited and barred any modification of a divorce decree incorporating a lump sum settlement in lieu of alimony [App. D-3]. It was the duty of the court below to apply that law. If it had done so, the orders of 1957 and 1958 introduced by respondent would have been found to be void *ab initio* and of no force and effect, and petitioner would have recovered the payments due her under the 1955 decree of divorce.

In reaching its erroneous decision, the court below cited the controlling statute, Ill. Rev. Stats. 1967 Ch. 40 Sec. 19 [App. D-3]. However, in construing that statute, the court cited and relied upon *De La Cour v. De La Cour,* 363 Ill. 545, 2 N.E.2d 896 (1936), a case which had been specifically overruled by the Illinois Legislature in its 1947 amendment to the statute. *The effect of that amendment was to expressly deprive the courts of Illinois of continuing jurisdiction to amend a divorce decree which recited a lump sum property settlement in lieu of alimony.* The court in *Guest v. Guest,* 351 Ill.App. 148, 114 N.E. 232 (1953), held the only exception to be as to *prospective* child support monies.

The 1957 and 1958 orders of the Illinois court were void on their face and should have been so held by the court below. The court's action to the contrary was clear error.

CONCLUSION

Petitioner respectfully requests that this Honorable Court

invoke its constitutionally established supervisory authority and power over the Seventh Circuit Court of Appeals, to the end that the clearly erroneous decision of that court be reversed and the matter remanded to the court below to render its decision in a manner consistent with a proper interpretation and application of the law of the State of Illinois.

Respectfully submitted,

R. WICKS STEPHENS II

Attorney for Petitioner

GATES, TALBOT, MORRIS
& MERRELL

Of Counsel

CERTIFICATE OF ATTORNEY FOR PETITIONER

I, R. WICKS STEPHENS II, duly qualified and admitted to practice before this Honorable Court, certify as follows:

1. That the foregoing Petition for Rehearing is filed pursuant to Rule 58(2) of this Honorable Court and is presented in good faith and not for delay.

2. That the Petition is based upon Rule 19 (1) (b) of the Rules of this Honorable Court and is restricted to the single ground available though not previously presented, that the Court of Appeals for the Seventh Circuit has decided an important state question in a manner in conflict with applicable state law, so as to call for an exercise of this Court's power of supervision.

Executed at Los Angeles, California, this day of December, 1968.

R. WICKS STEPHENS II

Subscribed and sworn to before me,
this day of December, 1968.

Notary Public in and for the County
of Los Angeles, State of California.

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 215 West Fifth Street, Suite 205, Los Angeles, California 90013, that on DECEMBER , 1968, I served the within PETITION FOR REHEARING (No. 521, Oct. Term. 1968) on the following named parties by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Los Angeles, California, addressed to said parties at the address as follows:

FRANK D. MAYER – GEORGE V. BOBRINSKOY, JR.
231 SOUTH LA SALLE STREET
CHICAGO, ILLINOIS 60604

Attorneys for Michael Reese Hospital

I swear under penalty of perjury that the foregoing is true and correct.

Executed on DECEMBER , 1968, at LOS ANGELES, CALIFORNIA.

D. A. Standefer

Subscribed and sworn to before me
this day of December, 1968.

Notary Public in and for the County
of Los Angeles, State of California.

Dean-Standefer Co., 215 W. Fifth St., Los Angeles 90013